

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1469 OF 2006

SHRI ABDUL KADIR M. RAKHANGI)
 residing at R.No. 24, 2nd floor)
 Ibrahim Manssion, Almas Colony)
 Mumbra, Dist. Thane.) .. PETITIONER

Versus

1. Shri A.N. ROY,)
 Commissioner of Police)
 Brihan Mumbai.)
 2. The State of Maharashtra)
 3. The Superintendent, Nashik)
 Road Central Prison, Nashik) .. RESPONDENTS

Mr. U.N. Tripathi for petitioner

Mr. S.R. Borulkar, PP with D. S. Mhaispurkar, APP

CORAM:-SMT. RANJANA DESAI &
 D. B. BHOSALE, JJ.

DATED:-25/4/2007

JUDGMENT:- (Smt. Ranjana Desai, J.)

. The petitioner is the father of one Mohamed @
 Mamdy Hanif Abdul Kadir Rakhangî ("the detenu" for
 convenience). The petitioner has challenged in

this petition the order of detention dated 29/5/06 issued by the 1st respondent Commissioner of Police, Brihan Mumbai, under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("the said Act" for short). The said order was issued with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. The said order was served on the detenu on 26/6/06.

2. The impugned order of detention is based on one case being C.R. No. 459/05 registered at Worli Police Station under Section 387 read with 34 of the I.P.C. read with Sections 3, 25 of the Arms Act. The incident in connection with which this case was registered took place on 26/12/05. The petitioner was arrested on 7/1/06. He was released on bail by the Metropolitan Magistrate 29th Court, Dadar, Mumbai and he availed of the bail facility on 31/1/06.

3. The impugned order of detention also rests on 2 in-camera statements. Statement of witness A was recorded on 24/4/06. In this statement witness A has deposed about an incident which had taken place

in the first week of December, 2005. According to witness A, the detenu was involved in this incident. Statement of witness B was recorded on 26/4/06. Witness B has deposed about an incident which had taken place in the 2nd week of March, 2006. According to witness B, the detenu was involved in this incident.

4. The Sponsoring Authority on the basis of the above material submitted the proposal to the detaining authority on 30/5/06. After perusing the documents the detaining authority issued the impugned order of detention because he was satisfied that the detenu was likely to indulge in activities prejudicial to the maintenance of public order.

5. We have heard Mr. Tripathi, the learned counsel appearing for the petitioner. He submitted that the order of detention must be set aside because the alleged incidents on which the detaining authority has placed reliance at the most affect law and order and not public order. In our opinion, this submission must be rejected.

6. The 1st incident took place at 9-45 p.m. at a

public place. It appears that the detenu and his associates aimed pistol and choppers at the complainant. They threatened and asked him to bring Rs.20,000/- near the PCO. The manner of commission of this incident and the attendant circumstances clearly indicate that this incident had affected public order.

7. Besides statements of witnesses A and B indicate that the petitioner is indulging in extortion activities. The Supreme Court has in **Sharad Kumar Tyagi V. State of Uttar Pradesh & Ors, AIR 1989 SC 764** clearly held that extortion falls within the ambit and scope of the term 'public order'. This submission of Mr. Tripathi must, therefore, fail.

8. Mr. Tripathi then contended that the State Government has not considered the representation addressed by the detenu to the State Government. He submitted that copy of the said representation dated 10/7/06 was handed over to jail authority for forwarding it to the State Government. However, so far no communication has been received from the State Government as to whether the said representation is considered or not. Mr. Tripathi

contended that on this ground the order of detention must be set aside.

9. In this connection affidavit is filed by Shri Tatyaba S. Nimbalkar, Jailor, Group - II, attached to Thane Central Prison, Thane. He has stated that advocate of the detenu had forwarded the representation in quadruplicate for forwarding the copies to the Chairman Advisory Board and accordingly three copies of the said representation were forwarded to the Advisory Board vide letter dated 12/7/06. He has further stated that since no request was made to forward the copy of the representation to the State Government and since the said representation was not addressed to the State Government, copy was not forwarded to the State Government. In view of this affidavit Mr. Tripathi submitted that he does not wish to press this submission. Hence it is not necessary for us to deal with it.

10. Lastly Mr. Tripathi submitted that the State Government has approved the order of detention without proper application of mind. He also submitted that even confirmation order is passed without application of mind. In support of this

submission Mr. Tripathi relied on judgment of this court in Shri Rajendraprasad Gupta @ Munnabhai @ Rajubhai Surajlal Gupta v. Shri R. S. Sharma & Ors., 2004 All M.R. (Cri.) 2356. In this case similar contention was raised in a group of petitions filed before this court. This court perused the records of those cases and on facts held that at the stage of approval or confirmation the concerned officer is required to apply his mind to the relevant material which is required to be considered by law afresh. This court found that confirmation orders were passed without application of mind to all the relevant factors required to be considered. This court observed that there was nothing to indicate that grounds of detention and material in support thereof were considered by the authorised officer while passing confirmation orders. In the circumstances, orders of detention were set aside.

11. In the instant case, the Under Secretar, Home Department has on affidavit denied that the detention order is approved without application of mind and without following procedure under the said Act. So far as confirmation order is concerned, the Under Secretary Home Department (Special) has

stated as under:

. "With reference to amended para 5(k) of the petition, it is denied that the confirming authority i.e. the State Government has not followed the proper procedure as required by the law and according to the relevant provisions of the M.P.D.A. Act, 1981, while confirming the Order of Detention. It is denied that the confirmation order was issued by the State Government without application of mind. It is denied that the order of detention was confirmed for the period of 12 months without considering the material. It is denied that there was no material before the authority to come to the conclusion that this is a matter which should be worth confirming it for one year. It is denied that there was no cogent material to this effect before the confirming authority and in the casual and cavalier manner, the order of confirmation was issued for the period of 1 year.

. I say that the detenu was actually detained on 26/6/06 and thereafter the case of the detenu was referred to the Advisory Board vide letter dated 6/7/2006. Thereafter the Advisory Board in its

meeting held on 21/7/2006 had opined that there is a sufficient cause for the detention of the detenu. Accordingly, opinion and report of the Advisory Board was forwarded to the State Government which was received in the department on 29/7/2006. It is submitted that after receipt of the said report the file and the report was placed before the Additional Chief Secretary (Home). I state that the Additional Chief Secretary (Home) considering the entire material placed before him which includes the order of detention, grounds of detention and opinion of the Advisory Board, confirmed the order of detention for a period of 1 year, who is duly empowered to do so. In view of this, it is denied that the order of detention was confirmed by the State Government mechanically and without application of mind."

12. In order to ascertain whether this statement made on oath by the Under Secretary is correct or not, we perused the files. We found that the affidavit filed by the Under Secretary is borne out by the record. In our opinion, approval as well as the confirmation is done with application of mind. This submission of Mr. Tripathi must also fail. No other submission was advanced by Mr. Tripathi.

13. In the circumstances of the case, in our opinion, the detention order is perfectly legal and justified. There is no infirmity attached to it. Hence the petition is dismissed.

JUDGE.

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D. B. BHOSALE, JJ.

DATED:-25/4/2007

OPERATIVE PART OF ORDER:

. For the reasons separately recorded in the Judgment, this Court has dismissed the petition.

JUDGE

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